

REMARKS/ARGUMENTS

Applicant's undersigned representative would like to thank the Examiner for granting the personal interview conducted on May 27, 2004. As discussed in the interview, the claims have been amended to more clearly distinguish from the prior art.

Claims 1-34 were rejected under the judicially created doctrine of obviousness-type double patenting over claims 34-68 of co-pending U.S. Patent Application No. 09/804,848. Applicant elects not to presently file a terminal disclaimer pending the indication of otherwise allowable claims by the Examiner.

Claims 20-21 and 33-34 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite. Claim 20 and 34 have been appropriately amended to obviate the rejection. Further, it is respectfully submitted that the limitation "in-the-ear" is sufficiently clear and definite. Applicant submits that it is possible to utilize body electrodes contacting the body of the wearer of a hearing aid regardless of whether the hearing aid is an in-the-ear or an outside-the ear type device.

Claims 1-23, 27 and 33 were rejected under 35 U.S.C. 102(e) over U.S. Patent No. 6,198,971 to Leysieffer et al. Claims 1 and 22 were amended herein to more clearly distinguish from the prior art, and thus, for the following reasons, the rejection has been rendered moot.

Regarding amended claim 1, Leysieffer does not teach a method of establishing a communications link comprising the step of "establishing one of said at least two electrical conductors by the individual's body," or "a second one of said at least two electrical conductors by a wire" as required. In Leysieffer, the only connection established to the hearing system (1) is via an inductive coil coupling between an implant coil 122 and an external coil 121. Thus, there are no electrical conductors establishing a communications link, either by a wire or by an

individual's body. Since every limitation of the claim is not taught by Leysieffer, claim 1 and its dependent claims 2-21 are patentable over the prior art of record.

Regarding amended claim 22, Leysieffer does not teach "a pair of body electrodes for establishing an electrically conductive communication path through the body of an individual," as required. As partially explained above with respect to claim 1, Leyseifer utilizes an inductive coil coupling for communicating and not the body of an individual to establish an electrically conductive communication path, as in the presently claimed invention. Since every limitation of the claim is not taught by Leysieffer, claim 22 and its dependent claims 23, 27 and 33 are patentable over the prior art of record.

Claims 1-21 and 28-31 were rejected under 35 U.S.C. 103(a) over Leysieffer. As explained above, Leysieffer does not teach every limitation of the amended claims. Further it is respectfully submitted that one of ordinary skill in the art would not find a suggestion in the prior art to modify the teachings of Leysieffer to arrive at the claimed invention. Thus, since every limitation is not taught or suggested by Leysieffer, claim 1 and its dependent claims 2-21 and claims 28-31, which depend from claim 22, are patentable over the prior art of record.

Claims 1-21 and 32 were rejected under 35 U.S.C. 103(a) over Leysieffer in view of U.S. Patent No. 6,084,975 to Perkins. For the following reasons, the rejection has been rendered moot by the amendment to the claims.

As explained above with regard to claim 1, Leysieffer does not teach or suggest every limitation of the invention. Perkins does not teach or suggest those deficiencies of Leysieffer. Specifically, Perkins teaches only the use of a pair of wires (see Fig. 3, item 66) for connecting left and right promontory coils. There is no suggestion in Perkins to use an individual's body for establishing an electrical conductor. Thus, since every limitation of the claims is not taught or

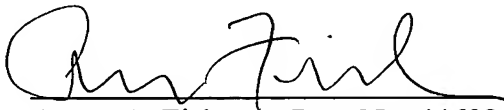
suggested by Leysieffer, claim 1 and its dependent claims 2-21 and claim 32, which depends from claim 22, are patentable over the prior art of record.

In light of the foregoing, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the Examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 16-0820, our Order No. 34351.

Respectfully submitted,

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